

Application No.: 10/625,271

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REMARKS

Claims 1-3, 5-14, 16, 24-26 and 28-38 are pending. Claims 4, 15, 17-23 and 27 are cancelled. Claims 28-36 have been withdrawn. Claims 1, 8, 24 and 26 have been amended. No new claims have been added. Further examination is requested.

The present invention provides a composition capable of high level disinfection. According to claim 1, as amended, the invention provides:

A composition, consisting essentially of:
greater than about 0.1% by weight hydrogen peroxide;
from 0.1% to 5.0% by weight of aromatic acid component;
less than about 5% by weight surfactant;
optionally, a solvent; and
a carrier.

The composition of the invention provides a rapid disinfection capability in the presence of organic soil and against organisms that produce catalase. Moreover, the composition of the invention provide an improved rate of kill and an improved spectrum of activity against microorganisms while also exhibiting an improved efficacy against catalase producing organisms such as *S. aureus*. Because of its rapid disinfection capability, the composition of the invention is useful for disinfecting medical devices. The inventive composition is easy to handle, is generally compatible with other materials, and requires only a short contact time to achieve high level disinfection.

In the Office Action, claims 1, 2, 4-10, 13-18, 24-27, 37 and 38 were rejected under 35 USC §102(a) and (e) as being anticipated by Toussaint et al. (US 6,444,636).

Toussaint describes antibacterial liquid cleaning concentrates that contain the following ingredients at pH 3-6:

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0.05-5 wt% hydrogen peroxide;
0.1-5 wt% of a proton donating agent such as inorganic and organic acids;
16-30 wt% alkali metal, ammonium or alkaline earth metal such as sodium salt of a sulfonate surfactant;
7-16 wt% alkali metal or ammonium salt such as sodium of an alkyl sulfate surfactant;
1-10 wt% of a solubilizer;
0-5 wt% polyethylene glycol;
0-5% magnesium inorganic salt; and
water.

The compositions of the present invention show a surprising kill rate against *Mycobacterium terrae* which is demonstrated in the Examples set forth in the application. *Mycobacterium terrae* is used to establish whether a disinfectant is tuberculocidal or whether the disinfectant can be classified as a high level disinfectant. In contrast, the compositions described by Toussaint comprise aromatic acid and more than 5 wt% surfactant which would be expected to perform poorly in a mycobactericidal kill rate assay (<3 log reduction in 5 minutes) and would not be said to be high level disinfectants. One skilled in the art would understand that Toussaint's formulations would not be mycobactericidal because Toussaint teaches the use of an extremely high surfactant level (typically 23% or more). At such high surfactant concentrations, the compositions would be rendered inactive against mycobacteria, possibly due to the aromatic acid being trapped or bound by the surfactant. Additionally, nothing within the teaching of the Toussaint reference teaches or suggest to those skilled in the art that the disclosed compositions could be modified to provide a high level disinfectant compositions with fast kill rates.

For at least the foregoing reasons, reconsideration and withdrawal of the Office's rejection of the foregoing claims based on the Toussaint reference is requested.

Claims 1-3, 5-8, 10, 13-18, 26, 27, 37, and 38 are rejected under 35 USC §102(b) and §103(a) as being unpatentable over Devillez (5,736,582). Devillez (5,736,582) discloses skin treating compositions that contain, inter alia, the following ingredients at pH 4.6.

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hydrogen peroxide;
salicylic acid;
cetyl alcohol;
distilled water;
sodium hydroxide;
simethicone;
sodium lauryl sulfate;
promulgen G (stearyl alcohol +ceteareth 20).

Devillez's composition contains a very small amount of free salicylic acid (0.1 wt% calculated), which is the active form. In fact, the composition created by Devillez above contains mostly sodium salicylate. Such a small level of the acid combined with ~ 0.7 wt % surfactant is not expected to be active against mycobacteria. Moreover, Devillez uses more ingredients than are within the scope of the present claim 1, as amended. Nothing within the disclosure of Devillez teaches or suggests to one skilled in the art that the teaching in the Devillez reference can be modified to eliminate certain ingredients therefrom or to modify the relative percentages of the ingredients in the Devillez compositions to provide a composition like that described in Applicant's pending claim 1.

Applicant acknowledges the Office Action's indication that claims 11, 12 and 21-23 would be allowable if rewritten in independent form. To the extent the identified claims and/or the subject matter thereof remain pending, Applicant reserves the right to redraft the claims in the manner solicited in the Action.

Applicant has endeavored to address all of the issues raised in the Office Action. In view of the above, it is submitted that the pending claims are in condition for allowance, and the allowance of the application is now respectfully solicited. If the Examiner believes an interview would facilitate the examination of the present application, a phone call to the undersigned is solicited.

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Respectfully submitted,

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